

NTSB Order No. EA-4251

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of September, 1994

Dockets SE-12130
SE-13099

fact or law in dispute.² More specifically, based on the facts admitted, he determined that respondent's airman certificate must be revoked, as mandated by the clear language of section 609(c) of the Federal Aviation Act (the Act) of 1958.³ For the reasons that follow, we deny respondent's appeal and affirm the law judge's order.

Following respondent's guilty plea to three counts of possession of cocaine with intent to distribute, he was sentenced on October 5, 1989, to serve 115 months in federal prison.⁴

²The Administrator first sought to revoke respondent's pilot certificate under section 61.15(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 61) and, by later-filed revocation order, under section 609(c) of the Federal Aviation Act.

³Section 609(c)(1) (49 U.S.C. app. § 1429(c)) dealing with "Transportation, Distribution, and other Activities Related to Controlled Substances," states, in pertinent part:

The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

⁴The charges encompassed three separate instances of possession with intent to distribute a total of more than two kilos of cocaine. Respondent violated 21 U.S.C. § 841(a)(1), (b)(1)(B), and (b)(1)(C), and 18 U.S.C. § 2. According to the indictment, the crimes were committed on January 3, January 18, and March 1, 1988. See the Administrator's Motion for Summary Judgment, Exhibits 1 and 2.

Pointing to respondent's conviction, the Administrator issued an order of revocation on April 15, 1993, alleging a violation of section 609 of the Act.⁵ The Administrator further averred that an aircraft was used in the commission of the crimes. To be precise, respondent was a passenger on board a commercial jet from the United States to the Bahamas on more than one occasion to purchase cocaine, each time executing the transaction, concealing the contraband on an accomplice, and then traveling with the accomplice back to the United States on board a commercial flight.⁶

In his motion for summary judgment, the Administrator argued that the plain language of section 609 mandates revocation of respondent's airman certificate because 1) respondent was convicted of a drug-related crime punishable by more than one year in prison; 2) an aircraft was used to facilitate the crime; and 3) respondent was on board this aircraft.

The law judge found that, based on the indictment, the statement from the special agent who investigated the case, and the judgment, the Administrator proved a violation of section

⁵As stated supra, the Administrator also revoked respondent's certificate by order dated August 30, 1991, under FAR section 61.15(a). Both orders served as complaints in this action. The law judge granted the Administrator's motion to consolidate the two cases, but found that the proceedings on the 61.15 charge were moot, given the affirmation of the revocation under section 609. This aspect of the case was not appealed and we do not address it here.

⁶See Statement of Special Agent Kenneth Aycock, South Carolina Law Enforcement Division, dated April 1, 1992, Administrator's Motion for Summary Judgment, Exhibit 3.

609(c).

On appeal, respondent argues that section 609(c) should not be applied in his case because he was not exercising the privileges of his airman certificate when the subject conduct occurred, but was merely a paying passenger on a flight conducted by a commercial airline. Consequently, he asserts, his qualifications as an airman are not implicated.

As noted, the Administrator believes that whether respondent was serving as an airman aboard the flight is not the issue. The Administrator asserts that, under the statute, he has no discretion in the matter. Rather, he is required to issue a revocation order to an airman convicted of a drug-related crime other than simple possession where an aircraft was involved and the certificate holder either served as an airman or was on board the aircraft during the commission of the crime. We are inclined to agree with this view, though the language may be open to different interpretations. However, as the case is one of initial impression, and as the Administrator has the primary responsibility for the administration of the certification provisions of Title VI of the Federal Aviation Act, we believe that deference is owed to the Administrator's interpretation of the statutory language, absent circumstances which are not present here.⁷

⁷See 49 U.S.C. app. § 1429(a), where it states, in pertinent part:

In the conduct of its hearings under this subsection, the [National Transportation Safety] Board shall not be bound by any findings of fact of the

Therefore, we uphold the law judge's decision to grant the Administrator's Motion for Summary Judgment, as no genuine issues of fact or law are present.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's grant of summary judgment is affirmed; and
3. The revocation of respondent's airman certificate shall begin 30 days after service of this order.⁸

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

(..continued)

Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law.

⁸For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).